

ND Racing Commission

Winston E. Satran, Director

June 9, 2011 10:00 a.m.

Administrative Rules Committee
Legislative Assembly
Rough Rider Room, State Capitol
Representative Kim Koppelman, Chairman

The North Dakota Racing Commission began the administrative rules revision process in April of 2010. Assistant Attorney General Bill Peterson and Racing Commission Director Winston Satran began to address rules that needed to be revised to meet the current requirements of simulcast and account deposit wagering. These rule changes did not result from any statutory changes made by the Legislative Assembly nor are the changes related to any federal or state regulation.

The revision was directed at assigning the proper responsibilities to the charities, the Racing Commission, and the account deposit wagering companies. The rules are designed to reduce risk for the charities and the state of North Dakota and to assign the proper accountability to those conducting the wagering. These rule revisions were drafted to supplement the current language to assist in making the language more descriptive of the actual wagering activity and to strengthen the accountability in the wagering process. This was done by assigning specific responsibilities to the charities, authorizing access to wagering records, changing language to clearly include the proper identification of the activity.

Preliminary drafts of the administrative rules were presented to the Racing Commission on June 8, 2010. A motion was passed by the Commission to approve the continuation of the administrative rule change process.

A Small Entity Regulatory Analysis and Economic Impact Statement were written on August 18, 2010. The Full Notice of Intent and a draft of the proposed rules were placed on

the Racing Commission's website on the same day. On August 19, 2010 a date for the public hearing was set for September 22, 2010 at 9 a.m. On August 19, 2010, a letter was sent to the North Dakota Newspaper Association requesting publication of the Abbreviated Notice of Intent to Adopt and Amend Administrative Rules in each official county newspaper; and the Full Notice of Intent to Adopt and Amend Administrative Rules with a copy of the proposed rules was sent to John Walstad, Code Reviser, at the Legislative Council.

The Racing Commission expended \$1,478 in providing public notice through North Dakota county newspapers.

The public hearing was held on September 22, 2010, at 9 a.m. in the Fort Lincoln Room of the State Capitol. There was no public comment made at the hearing. Written comments were accepted until 4 p.m. October 4, 2010. All written comments are attached.

Extensive written comments were submitted by Attorney John Ford who is associated with Lien Games of Fargo, ND. On November 2, 2010, after approval by the Racing Commission, a meeting was held between Racing Commission Director Winston Satran and Attorney John Ford to discuss Mr. Ford's fifty-four written comments and to develop a more concise document for consideration by the Racing Commission at their December meeting. After discussion, Mr. Ford withdrew written comment numbers 3, 16, 17, 20, 22, 35, 37, 39, 40. After review and debate regarding written comments by Mr. Ford numbers 1, 14, 15, 18, 26, 31, 36, 41, 45, 52, and 54, Director Satran recommended no changes to those proposed rules. After extensive discussion with Mr. Ford, Director Satran recommended to the Commission changes in the general language to the remaining written comment numbers. On December 14, 2010, the Racing Commission approved the changes as recommended by Director Satran, and authorized Assistant Attorney General Bill Peterson to review and finalize the proper wording of the rules.

Written comment was also received from Thomas Metzen, from the Horsemen's Consulting and Marketing Group LLC from Minneapolis, MN. These comments were presented to the ND Racing Commission for their review on November 2, 2010. The Commission reviewed Mr. Metzen's comments on Rule 69.5-01-11-01 and Rule 69.5-01-11-11.1. Mr. Metzen added language to subsections and added subsections to the rules. The Racing Commission declined to implement any changes suggested by Mr. Metzen to the proposed rules.

Comments regarding distribution of funds for North Dakota-bred pari-mutuel races were submitted by Lee J. Harsche on behalf of the ND Horsemen's Advisory Council. The Racing Commission did not consider these comments because they did not pertain to the rule changes that were published in the Public Notice in the county newspapers and on the Racing Commission website.

The Racing Commission proposed changing the administrative rules to accommodate the changes in technology in account deposit wagering. These rule changes were made to redistribute the responsibilities and the accountability of each entity in the wagering process. The changes ensure better safeguards in accountability, reporting, and supervision of wagering activities.

A regulatory analysis was not required under NDCC 28-32-08 because there was not a written request filed by the Governor or a member of the Legislative Assembly. Nor are the proposed rules expected to have an impact on the regulated community in excess of \$50,000.

A copy of the Small Entity Regulatory Analysis and Small Entity Economic Impact Statement is attached.

A takings assessment was not prepared because the rules do not limit the use of real property.

The rules were not adopted as emergency rules under NDCC 28-32-03.

It is the Racing Commission's intent to strengthen the monitoring and supervision of all forms of pari-mutuel wagering on horse races licensed by the North Dakota Racing Commission. The Racing Commission also recognizes the rapid change in technology and advancements in communication and will focus on adjusting to the ever-changing environment. The Racing Commission will be cognizant that their mission is to ensure that the wagering process remains legal and consistent with the nationally accepted changes that take place in the Horse Racing Industry.

Small Entity Regulatory Analysis

1. **Was establishment of less stringent compliance or reporting requirements for small entities considered?** The Racing Commission did not consider less stringent requirements. Integrity and accountability are important in racing and should not be lessened for smaller entities.
2. **Was the establishment of less stringent schedules or deadlines for compliance of reporting requirements considered for small entities?** These were also not considered as the rule changes will not have significant impact on small entities for compliance and effect on reporting.
3. **Was consolidation or simplification of compliance or reporting considered?** These new rules will require compliance and will ensure public and governmental confidence.
4. **Were performance standards established for small entities for replacement design or operational standards required in the proposed rules?** No changes in performance or operational standards were part of these rules. The Racing Commission clarified the role of the charities and provided authority and oversight of the wagering process.
5. **Was exemption for small entities from all or part of these requirements in the proposed rules considered?** No consideration was given to either large or small entities; the integrity of racing was the focal point of these regulations.

Small Entity Economic Impact Statement

1. **Which small entities will be subject to these proposed rules?** All participants involved in racing are subject to these proposed rules.
2. **What are the administrative and other costs required for compliance with the proposed rules?** The administrative costs required to comply with the proposed rule will be funded by proceeds from the Promotion Fund administered by the ND Racing Commission.
3. **What is the probable cost and benefit to the private persons and consumers who may be affected by these proposed rules?** There will be no probable costs to private persons or consumers for the administration of the change in Chapter 69.5-01-11 Simulcasting. Private persons and consumers will benefit from increased scrutiny and accountability by review of wagered accounts.
4. **What is the probable affect on state revenues?** The implementation of the rule is intended to increase revenue into State taxes and the Promotion, Purse, and Breed Funds administered by the ND Racing Commission.
5. **Are there less intrusive or less costly methods of achieving the purpose of the proposed rules?** Less intrusive rules would limit the Racing Commission's ability to properly regulate pari-mutuel racing. These rules have no bearing on costs.

ND Racing Commission
500 North 9th Street, Bismarck, ND
November 2, 2010

ND Racing Commission's Consideration
of three written comments submitted
following the 9/22/2010 Public Hearing in regard to
proposed changes to the Administrative Code

Director of Racing's Review of Public Written Comments (10/28/2010)

Written comments received 10/4/2010 from John Ford, BAM Software and Services LLC:

In addition to the new wager types, in order to provide the Commission with greater flexibility to quickly meet the changing conditions of the industry, I would request that a new Section 69.5-01-08-4 (18) be added which would provide the Commission with the authority to approve new wagering pools after notice and public hearing, but without going through the current rule making process.

Response by Winston Satran and Assistant Attorney General Bill Peterson:

It would not be advisable and it is not legal to add a provision which would allow the approval of new wagering pools without going through the rule making process. Even though the rule making process is somewhat lengthy, it provides an avenue for the public to make comment concerning wagering and the expansion to gambling in North Dakota. The current process invites public input and requires the Racing Commission to justify the changes that are being set forward. It is my recommendation that the current process continue into the future.

69.5-01-08-04 (15)

I would request further clarification for when wagers are added to the mad scramble daily pool, the mad scramble carryover pool and the jackpot carryover pool. There are several references to the "major pool", the "carryover pool", the "mad scramble pool", the "carryover", and I think it would be helpful to always designate whether the references are to the daily pool, the mad scramble carryover pool, or the jackpot pool.

Response by Winston Satran:

I agree with Mr. Ford's comments and I recommend submitting clarifying language.

69.5-01-08-04 (15) (a)

With regard to the mad scramble, I would suggest that the service provider be able to permit, as an alternative, the consumer to be able to select their jackpot number.

Response by Winston Satran:

It is my recommendation that Mr. Ford's suggestion not be implemented. The players that wager significant sums of money could stipulate all sixty numbers and purchase winning combinations of numbers insuring that they would win the jackpot pool. The assigning of the random number protects the integrity of the pool.

69.5-01-08-04 (15) (c)

There is a reference to "method one" which is not defined and unclear as to its meaning. In addition, could the service provider have the flexibility to offer consolation and minor pools?

Response by Winston Satran:

I recommend deleting "method one" and submitting clarifying language.

We have received comments from four different providers, two emphasizing that minor pools are needed and two emphasizing that minor pools are not needed for this wager. It is my recommendation that if the account wagering company fills all of the requirements and presents a structured pool payout plan that a provision be provided in the regulation that allows for minor pools upon the approval of the commission and the site operator.

69.5-01-08-04 (15) (c) (2)

Could you clarify that the net pool, when there are no wagers, is added to the major pool carryover, and not the jackpot pool carryover.

Response by Winston Satran:

I agree with Mr. Ford's comment and recommend adding the words "major pool".

69.5-01-08-04 (15) (f) (2) (a)

With regard to mandatory distribution, it doesn't define what a "major share" is when describing qualifications for winning bettors.

Response by Winston Satran:

The major share would be sixty-five percent of the wager returned to the player on the winning ticket only.

69.5-01-08-04 (15) (h)

Could you remove the limit on the amount of money which can be contributed to mad scramble carryover, as well as provide for the moneys contributed to be removed from the pool.

Response by Winston Satran:

I agree with Mr. Ford's comment and recommend adding clarifying language.

69.5-01-08-04 (16) (c)

Shouldn't the percentage start at 100% when someone selects all nine correctly, and then decrease from there, instead of starting at 50%? And under subsection (5), shouldn't the carryover amount be the daily net pool, less the payout given under subsections 2-4, as opposed to 50% of the net pool carryover?

Response by Winston Satran:

I recommend adding subsections 6, 7, and 8 and designating the carryover of each pool.

69.5-01-08-04 (16) (f) (1)

The refund amount should be of the daily pool, not the entire pool, which might be construed to include the carryover.

Response by Winston Satran:

I concur with Mr. Ford and recommend inserting "daily" into the rule which designates the amount of refund.

69.5-01-08-04 (16) (h)

This seems to prevent people from selecting coupled entries in the Pick 1-2-3 wager? Why shouldn't you be able to select a coupled entry?

Response by Winston Satran:

There are a small number of large horse fields and adding coupled entries reduces the potential to conduct the race with large horse fields.

69.5-01-08-04 (17) (b)

Comment 8 from above applies to this section as well. (Shouldn't the percentage start at 100% when someone selects all nine correctly, and then decrease from there, instead of starting at 50%? And under subsection (5), shouldn't the carryover amount be the daily net pool, less the payout given under subsections 2-4, as opposed to 50% of the net pool carryover?)

Response by Winston Satran:

I recommend adding stipulations of the carryover for descending order of right choices if there is no winner.

69.5-01-08-04 (18)

Can you insert "Unless otherwise provided herein," at the beginning of this section?

Response by Winston Satran:

I recommend that this phrase not be added to the beginning of this section as it does not serve a purpose.

69.5-01-08-04 (19)

The caveat for Daily Double should reference other wager types as well.

Response by Winston Satran:

Consideration should be given to add the following races: Daily Double, Pick Pools, Twin Trifecta Pools, Tri-Superfecta Pools, Twin Quinella Pools, Pick 1-2-3 Pools, and Pick 1-2-3-4-5 Pools.

69.5-01-11-01 (1)

Can you add "entity" as to who may open an account?

Response by Winston Satran:

Mr. Ford recommends that we add entity. I am opposed to adding the word entity because it may disguise the individual who is making the wager and therefore not meeting the requirement of knowing your customer.

69.5-01-11-01 (6)

Can you insert "at a sending race track" after the word "person", as this definition seems to be applicable to conduct at race tracks.

Response by Winston Satran:

I recommend we leave it as the proposed rule is written and not add "at a sending race track".

69.5-01-11-02 (5)

The last 7 words should be deleted as redundant?

Response by Winston Satran:

I recommend that we do not make a change to this subsection.

69.5-01-11-03 (2) (l)

Can you clarify whether the compliance and testing has to be obtained for the period two years prior to application or within two years after application.

Response by Winston Satran:

I recommend that this subsection remain the same as it is written in the proposed rules.

69.5-01-11-04 (12) (c)

The second to the last sentence, could you change it to read as follows, so that a further change would not be required in the event of a law change with regard to breakage: "A simulcast service provider shall also submit a report and a corresponding payment of funds to the racing commission for the full amount of all breakage due to North Dakota retained by a simulcast service provider. The last sentence should be revised to calculate breakage in accordance with the host track rules.

Response by Winston Satran:

The law takes precedence over the rules.

69.5-01-11-04 (13)

In changing this paragraph, which mostly covered race stewards, to now only apply to auditors, a few changes are requested. Subsection (a) only seems appropriate to live race meets, not to service providers. Subsection (c) seems overly broad when applied to auditors. It requires a report of "all actions" taken by a service provider or totalizator company. Is there a specific area to which the report should relate? Subsection (d) grants the auditor the power of a "presiding official" when he is on the premises of a service provider. While that may have been appropriate for a steward, is it appropriate for an auditor?

Response by Winston Satran:

These subsections should remain as written in the proposed rules.

69.5-01-11-05 (4)

Could you clarify that if the Service Provider provides the bond under Section 69.5-01-11-03 4, the Site Operator need not do so.

Response by Winston Satran:

That is to remain the same because the site operator may need to have a bond to pay state taxes if conducting live racing.

69.5-01-11-06 (7)

I would suggest that further changes be made to this section to accommodate self-service kiosks. I would suggest the following:

Only a licensed employee of a simulcast site operator or service provider may conduct simulcast or pari-mutuel wagering on behalf of a simulcast-site operator, except where valid pari-mutuel wagers tickets are processed issued by a self-service pari-mutuel ticket machine device which is an automated ticket machine, conducted electronically, telephonically, or through the internet. A simulcast site operator or service provider may use such devices ~~automated ticket machines~~ only with the prior approval of the commission. When such devices ~~automated teller machines~~ are used by a simulcast site operator or service provider, the operator may contract with persons other than employees whose activities on behalf of the simulcast site operators or service provider must be limited to the following:

- a. To collect and account for cash receipts extracted from such devices a ~~voucher issuing machine.~~
- b. To provide and account for pay out cash disbursements for winning tickets and for withdrawals from wagering accounts.
- c. To maintain a record of such cash-handling activities using a record keeping system devised by the site operators or service provider and approved by the commission.

Such contractors must be licensed by the commission.

Response by Winston Satran:

I agree with Mr. Ford's proposed language in his comments.

69.5-01-11-07 (6) (I think this should be subsection (7))

I would ask that this section be deleted, as, given the close working relationship between the site operator and the service provider, financial savings can be achieved with individuals working in various roles.

Response by Winston Satran:

This comment is a moot point because the rules allow the service provider to conduct the wagering and the site operator provides the oversight, authorization, and review and there should not be a need to have site operator employees. This area needs discussion with Assistant Attorney General Peterson.

69.5-01-11-11.1 (1)

I would request the fourth and fifth sentences be replaced with the following:

The notification must occur prior to or at the time of when the new rules are applied to the account. Notification may be posted on the website utilized for account wagering, or by mailing to the player at their last known address. The player shall be deemed to have accepted the rules of account operation upon opening or not closing the account.

Response by Winston Satran:

I would accept his comments, except in the second sentence change "Notification may be posted on the website" to "Notification shall be posted on the website..."

69.5-01-11-11.1 (2)

I would request that the word "review" be deleted, as it implies some discretionary activity, when in fact accounts are approved electronically if personal information can be electronically verified.

Response by Winston Satran:

Mr. Ford's comment should be discussed. I recommend the word "review" be deleted from the rule.

69.5-01-11-11.1 (3)

There are some very good changes in this section, but I would request a few changes. I would suggest that the lists referenced in the third sentence is too vague. Could it be more objective, such as lists "specified by the commission"? I would ask that the fifth sentence be deleted as much too broad a requirement. You have already required filtering through government sanctioned lists. This would require a higher standard? Name analysis? As well, the seventh sentence is much too vague. If there are standards to be met, I would suggest that they be clearly stated. Otherwise, only confusion will result.

Response by Winston Satran:

This will need to be discussed with Assistant Attorney General Peterson and Mr. Ford.

69.5-01-11-11.1 (4)

Can you add "or service provider" at the end?

Response by Winston Satran:

I agree with this comment.

69.5-01-11-11.1 (5) (c)

Can this subsection be modified as follows:

The service provider shall provide, for each player, a confidential account number or user name and password or PIN to be used by the player to access their account, or at the service provider's option, confirm the validity of every account transaction.

Response by Winston Satran:

I agree with Mr. Ford's comments.

69.5-01-11-11.1 (6)

I would suggest that the regulations not limit the ways in which players can deposit monies into their accounts. Could the first sentence be changed to read as follows: "Deposits may be made in such ways as are offered by the site operator or service provider."

Response by Winston Satran:

I agree with Mr. Ford's comment.

69.4-01-11-11.1 (7) (c)

Could you change the first two sentences as follows:

Authorized withdrawal from an account when the player transmits to the service provider a properly identifiable request for a withdrawal. The service provider will honor the request contingent on collected funds being valuable (available) in the account, and upon satisfaction of such rules for withdrawal as shall have been established by the service provider and for which the player has notification.

With this change, I think the last sentence should be deleted.

Response by Winston Satran:

Discussion is needed on this point.

69.5-01-11-11.1 (10) (b)

Please add the word "not" before operable in the first sentence of this subsection. I believe the second sentence of this subsection is wrong. The actual wager should be the wager which was transmitted and confirmed by the tote, subject to proper merger by the tote. If the player requested a different wager, I don't think you should treat that as the wager, because you would then be paying winners regardless of whether the wager was ever submitted by the tote.

Response by Winston Satran:

*I agree we should add "not" before operable in the first sentence of this subsection.
Discussion needed on Mr. Ford's comments.*

69.5-01-11-11.1 (11)

Can you replace commission or site operator with service provider?

Response by Winston Satran:

I agree we should change site operator to service provider.

69.5-01-11-11.1 (12)

Please add the word "site" before the word "operator" in the second line. Can you delete subsection 12(b) as there seems to be no reason for the site operator to have control over the marketing promotions and efforts of the service provider. I don't know the purpose of subsection 12(c), but I don't see the appropriateness of having the site operator "approve" or make "objection" to historical transactions. Can you also delete this subsection?

Response by Winston Satran:

I agree we should add "site" before the word "operator" in the second line. Regarding subsection 12(b), the site operator (charity) must demonstrate that they are conducting wagering. Regarding subsection 12(c), the site operator (charity) must demonstrate that they are conducting wagering.

69.5-01-11-11.2 (2)

Can you add the word "commission" before the word "approval" in the first line?

Response by Winston Satran:

I agree we should add "commission" before the word "approval" in the first line.

69.5-01-11-11.2 (3)

Can you delete the word "licensing" from the second line of this subsection. Do you really want to delegate licensing of tote providers?

Response by Winston Satran:

I agree with Mr. Ford's comments.

69.5-01-11-11.2 (4)

Can you delete the word "service providers and" from the third line of this subsection. I wouldn't think you want to surrender licensing of service providers to other jurisdictions. This seems more appropriate for certification of tote providers.

Response by Winston Satran:

Needs discussion.

69.5-01-11-13

Throughout these next sections, the term "authorized pari-mutuel wagering entity" is used extensively. This is not defined. In some instances, such as with Subsection 69.5-01-11-13 (1)(a), it seems more applicable to the site operator who operates a race track. In others, such as subsection 69.5-01-11-13 (1) (b) it seems equally applicable to site operators who run a race track and service providers who conduct account wagering.

Response by Winston Satran:

Section (13) does apply to race tracks.

69.5-01-11-13 (2) and (3)

The specific technical requirements in this section are based on historical configurations, developed without the benefit of new technologies and security methods currently available. While I am happy to supply further detailed changes, wouldn't it be more appropriate, especially in this time of rapid technological change, to require submittal of an operating plan from the tote

company and have the commission receive expert guidance to determine whether it is sufficient?

Response by Winston Satran:

I agree with Mr. Ford's comments and will need to develop appropriate language.

69.5-01-11-13 (4) (a) (1) (c) (d) and (e)

I would suggest that tote software not be required to accept advanced wagers, assuming that to be a reference to accepting wagers days before an event takes place. I would recommend that networking with remote wagering sites only be required if that is part of the tote's operating plan submitted to the commission. And, I would recommend the requirement of simultaneous wagering cards only if part of the tote's operating plan submitted to the commission.

Response by Winston Satran:

I agree with Mr. Ford's comments and will need to develop appropriate language.

69.5-01-11-13 (4) (a) (1) (j)

Can you modify this subsection so that devices can be capable of providing duplicate copies of tickets, so long as the system can determine when a ticket has been cashed, notwithstanding how many copies are in existence.

Response by Winston Satran:

This needs discussion.

69.5-01-11-13 (4) (a) (1) (m)

Can you delete this subsection?

Response by Winston Satran:

Mr. Ford will need to explain.

69.5-01-11-13 (4) (a) (1) (o)

Can you delete the second sentence of this subsection, as it may contain proprietary and confidential information.

Response by Winston Satran:

I agree with Mr. Ford's comments.

69.5-01-11-13 (4) (a) (2)

This is also based on old technology, and should not require that tote software be able to identify individual users. Rather, they should be sufficient if they identify individual service providers.

Response by Winston Satran:

We need to discuss this. If we cannot identify users, and there are abnormal betting patterns, how do we investigate the abnormal betting patterns?

69.5-01-11-13 (4) (c)

Can you insert the word "data" in the second line of subsection (1) before the word "files", in the second line of subsection (2) before the word "files". And can you insert at the start of subsection (3), "if required by the commission,"

Response by Winston Satran:

I do not see any problem with adding the word "data" in the second line of subsection (1) before the word "files" and in the second line of subsection (2) before the word "files". Regarding subsection (3), we need discussion on "if required by the commission" and reasoning by Mr. Ford.

69.5-01-11-13 (4) (d)

Please delete "may be subject to the approval of the commission and the jurisdiction's taxing and finance authority, if appropriate" from subsections (1) and (3).

Response by Winston Satran:

This needs discussion.

69.5-01-11-14 (1) (a) (2)

With the goal of not requiring adherence to old tote procedures, I would request the second sentence of this subsection and all of the subparts (a) through (h) be deleted.

Response by Winston Satran:

We need to hear Mr. Ford's rationale. These regulations were taken from the Model Rules designed by ARCI.

69.5-01-11-14 (1) (a) (3) (c)

Please modify this to read as follows: "Permit revisions of computer programs on a sequentially numbered basis, which numbering shall be maintained."

Response by Winston Satran:

I accept Mr. Ford's comments.

69.5-01-11-14 (1) (a) (3) (e)

Please modify this to read as follows: "Require all program changes to be thoroughly tested, reviewed and approved by procedures adopted by the totalizator company before being placed into operation."

Response by Winston Satran:

I accept Mr. Ford's comments.

69.5-01-11-14 (1) (b)

With the goal of not requiring adherence to old tote procedures, I would request the first two sentences be modified as follows: "A totalizator company shall maintain a written operations manual for the totalizator system. The manual must clarify the authority, duties, responsibilities, and lines of communication."

Response by Winston Satran:

I agree with Mr. Ford's comments.

69.5-01-11-14 (2) (a) (1)

With the goal of not requiring adherence to old tote procedures, please revise the second sentence to read as follows: "The totalizator company shall employ a sufficient number of personnel to ensure an adequate segregation of duties designed to avoid collusion."

Response by Winston Satran:

I agree with Mr. Ford's comments.

69.5-01-11-14 (2) (a) (3)

With the goal of not requiring adherence to old tote procedures, I would request that this section, other than the first sentence, be deleted.

Response by Winston Satran:

I believe this section should remain as written.

69.5-01-11-14 (2) (a) (8)

I would request that the word "operations" be inserted before the word "personnel".

Response by Winston Satran:

I agree with Mr. Ford's comment.

69.5-01-11-14 (2) (b) (c) and (d)

With the goal of not requiring adherence to old tote procedures, I would request these sections be deleted.

Response by Winston Satran:

To be discussed at the meeting.

69.5-01-11-15 (2) (3) and (4)

With the goal of not requiring adherence to old tote procedures, I would request that actual printing of reports only be done at the request of the commission.

Response by Winston Satran:

I agree with Mr. Ford's comments.

69.5-01-11-15 (2) (b)

So as not to impose these rules on wagering devices, such as remote self-service kiosks, can you require these rules only for devices supplied by the tote and directly connected with the tote?

Response by Winston Satran:

To be discussed at the meeting.

69.5-01-11-01

1. "Account wagering" means a form of pari-mutuel wagering in which an individual deposits money in an account and uses the account balance to pay for pari-mutuel wagers. It includes advance deposit wagering. ***All pari-mutuel wagers made or processed by a licensed service provider are considered made in North Dakota, not at the players' physical location.***

Response by Winston Satran:

Assistant Attorney General Peterson's comments are: As proposed, it would not work. Also, even if the Racing Commission could draft it properly there does not seem to be any significant importance.

Account holders shall not make wagers from their account while residing or located in a non-wagering jurisdiction in which pari-mutuel wagering is forbidden. Account holders may not place wagers while residing or located in Alaska, Missouri, Nebraska, Nevada, New Jersey, North Carolina, Puerto Rico Islands, and Utah. Placing a wager while in one of these jurisdictions may result in prosecution of the account holder.

5. ***Cloud Computing is Internet-based computing, whereby shared resources, software, and information are provided to computers and other devices on demand, improving security and integrity. Cloud computing describes a new supplement, consumption, and delivery model for IT services based on the Internet, and it typically involves over-the-Internet provision of dynamically scalable and often virtualized resources.***

Response by Winston Satran:

There does not seem to be a need to define Cloud Computing in the Administrative Rules. Because of the changing dynamics in internet processes, we would recommend not naming an internet-based computing resource.

6. ***Computer Assisted Wagering is a pari-mutuel wager manually placed through the system once a preprogrammed set of terms, conditions, odds or payoffs are met.***

Response by Winston Satran:

The comment does not seem to have any significance that applies to this identification.

9. "Service" provider means a person engaged in providing simulcasting or account wagering services to a site operator and establishing, operating, and maintaining the combined pari-mutuel pool, but does not include persons authorized by the federal communications commission to provide telephone service or space segment time on satellite transponders. ***All wagers processed by a licensed service provider shall be deemed as being made in North Dakota.***

Response by Winston Satran:

I do not see the purpose or the importance of re-drafting the regulation. See response to Recommendation No. 1.

Account wagering. The requirements for account wagering are as follows:

5. 1 **The Service Provider may establish and maintain its "Physical Presence" with licensed site operator's agreement, at site operator's location in order to be in compliance. Service provider shall be deemed in compliance when unitizing "Cloud Computing" or similar technology while maintaining agreement with Site Operator.**

Response by Winston Satran:

I am not sure what purpose is intended here. This recommendation appears to be irrelevant when considering the intent of the regulation.

7. c. Authorized withdrawal from an account when the player sends to the service provider a properly identifiable request for a withdrawal. The service provider will honor the request contingent on funds being available in the account. If the funds are not sufficient to cover the withdrawal, the player will be notified, and the funds that are available may be made available for withdrawal. These transactions will be completed in accordance with financial institutions funds availability schedules **and after settlement from host tracks.**

Response by Winston Satran:

Disagree with comment "and after settlement from host tracks." The ADW must have a method of settling accounts and not be subject to payment from the tracks. Tracks have extended payment plans with ADWs and it may take as long as 60 days for the track to make the settlement with the ADW, therefore requiring the ADW to have enough financial resources so that the players may be paid.

11. The service provider may close any account when the player attempts to operate with an insufficient balance or when the account is dormant for a period determined by the commission or the site operator. In either case, the service provider shall refund the remaining balance of the account to the player within thirty days, **or upon final settlement with host tracks.**

Response by Winston Satran:

I recommend leaving the proposed rule as written. The ADW must have a method of settling accounts and not be subject to payment from the tracks. Tracks have extended payment plans with ADWs and it may take as long as 60 days for the track to make the settlement with the ADW, therefore requiring the ADW to have enough financial resources so that the players may be paid.

12. b. Service providers shall notify site operators of proposed rebate programs. **(Strike/remove) and receive authorization from site operators before implementation.**

Response by Winston Satran:

We recommend leaving the proposed rule as written because we must demonstrate that the charity is involved in conducting the wagering.

69.5-01-09-10. Distribution of funds for North Dakota-bred pari-mutuel races.

1. ~~Sixty percent of~~ The moneys accruing to the North Dakota breeders' fund shall be awarded to accredited North Dakota-bred horses who qualify for awards at licensed races outside the state and ~~forty percent shall be awarded to accredited North Dakota-bred horses who win awards at~~ licensed races within the state. Any race considered in this category must have a minimum purse of one thousand dollars and, if a claiming race, must have a minimum claiming price of two thousand five hundred dollars. All amount minimums will be determined in United States currency.

2. The official order-of-finish distribution amounts accredited must be as follows:

a. ~~Fifty percent of the total scheduled \$1,000.00 award payment to a winning accredited North Dakota-bred horse and~~ with the accredited North Dakota-bred broodmare and sire of such horse, if any payment remaining on the old system.

b. ~~Thirty percent of the total scheduled \$750.00 award payment to the placing accredited North Dakota-bred horse and~~ with the accredited North Dakota-bred broodmare and sire of such horse, if any payment remaining on the old system and

c. ~~Twenty percent of the total scheduled \$500.00 award payment to the showing accredited North Dakota-bred horse and~~ with the accredited North Dakota-bred broodmare and sire of such horse, if any, payment remaining on the old system.

d. For each starter after 3rd place that participates in a ND Bred Race, a \$100 award will be made.

3. ~~The North Dakota racing commission shall establish a point system assigning monetary values for each win, place, or show by North Dakota-bred horses at licensed race meets within the state and outside the state. The point system will assign values based on the relative moneys available for distribution inside the state and outside the state, and the number of horses that qualify for such awards inside the state and outside the state. The North Dakota racing commission shall award additional points within the system it established for qualifying performances by accredited North Dakota-bred horses who win, place, or show in a race at a licensed race meet outside the state where the purse is ten thousand dollars or more as follows:~~

a. ~~Purse of ten thousand dollars or more but less than twenty-five thousand dollars is worth double points.~~

b. ~~Purse of twenty-five thousand dollars or more but less than fifty thousand dollars is worth triple points.~~

c. ~~Purse of fifty thousand or more is worth quadruple points.~~

4. ~~Distribution points for win, place, or show shall be established by the North Dakota racing~~

~~commission for such performances by North Dakota-bred horses. Separate pools shall be established for moneys to be awarded to North Dakota-bred horses that earn awards at licensed races outside the state and for North Dakota-bred horses who earn awards at licensed races within the state.~~

5. The distribution of North Dakota breeders' fund award payments must be as follows:

a. Sixty percent of the scheduled award payment to owners of accredited North Dakota-breds who earn such awards, provided however, that if either the dam or sire, or both are not duly registered in the program as broodmares or stallions, that the award percentages that would have accrued to them, had they been in the program, be paid to the owner of the accredited foal up to one hundred percent of the scheduled award.

b. Thirty percent of the scheduled award payment to the owner of the dam of an accredited North Dakota-bred who earns awards, provided that the dam was registered in the North Dakota breeders' fund program as broodmare at the time the accredited North Dakota-bred was foaled.

c. Ten percent of the scheduled award payment to the owner of the sire at the time of conception of an accredited North Dakota-bred who earns awards provided that the sire was registered in the North Dakota breeders' fund program as a breeding stallion at the time the foal was conceived.

~~6. No more than a total of ten race awards or show in a race at a licensed race meet outside the state where the purse is ten thousand dollars or more as follows:~~

~~a. Purse of ten thousand dollars or more but less than twenty-five thousand dollars is worth double points.~~

~~b. Purse of twenty-five thousand dollars or more but less than fifty thousand dollars is worth triple points.~~

~~c. Purse of fifty thousand dollars or more is worth quadruple points. The North Dakota racing commission for such performances by North Dakota-bred horses. Separate pools shall be established for moneys to be awarded to North Dakota-bred horses that earn awards at licensed races outside the state and for North Dakota-bred horses who earn~~

4. Distribution points for win, place, or show shall be established by awards at licensed races within the state.

5. The distribution of North Dakota breeders' fund award payments must be as follows:

a. Sixty percent of the scheduled award payment to owners of accredited North Dakota-breds who earn such awards, provided however, that if either the dam or sire, or both, are not duly registered in the program as broodmares or stallions, that the award percentages that would have accrued to them, had they been in the program, be paid to the owner of the accredited foal up to one hundred percent of the scheduled award.

b. Thirty percent of the scheduled award payment to the owner of the dam of an accredited

~~North Dakota-bred who earns awards, provided that the dam was registered in the North Dakota breeders' fund program as a broodmare at the time the accredited North Dakota-bred was foaled.~~

~~2. Ten percent of the scheduled award payment to the owner of the sire at the time of conception of an accredited North Dakota-bred who earns awards provided that the sire was registered in the North Dakota breeders' fund program as a breeding stallion at the time the foal was conceived.~~

3. No more than a total of ten race awards per horse will be permitted. The owner may select the ten races (win, place, or show) for breeders' fund awards. Applications for breeders' fund awards of the preceding year's races must be received in the North Dakota racing commission office on approved forms by January fifteenth of the year, following those races

7. Award checks must have imprinted on them "This check is void if not cashed within sixty days after date of issuance". This statement is binding and checks not cashed within sixty days of issuance shall revert to the commission to be redeposited in the breeders' fund for future distribution awards with the exception that in the event the commission is unable to locate and award the recipient by United States first-class mail, the commission shall be given an additional sixty days beyond the void date of the award check to attempt to locate the payee. If unable to locate the payee within the additional sixty days, any such award shall revert back to the commission to be held in the breeders' fund for future distribution. Any subsequent claims for such awards by the person or entities not cashing award checks as prescribed or not located as defined by this section shall not be allowed.

8. In no event may North Dakota breeders' fund moneys be used to subsidize restricted races, other than those restricted to North Dakota-breds.

9. All broodmare and stallion awards must be calculated at the end of the year for distribution.

10. All owner's awards may be distributed with purse distribution or, until such time as sufficient criteria is established, may be calculated at year end for distribution.

11. No breeders' fund moneys will be payable to the owner or owners of the sire or dam unless the owner or owners of the runner makes application for and receives an award.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-11. Open company wins awards. Accredited North Dakota-bred horses that win open races at a North Dakota pari-mutuel track will be eligible to receive owner, breeder, and stallion awards authorized by the commission.

History: Effective January 1, 1990; amended effective March 1, 2001.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

~~**69.5-01-09-12. Special interim clause.** Until such time as there exists a major racing facility in the state as described in section 69.5-01-09-13, the provisions of this chapter regarding the division of available breeders' fund moneys between races inside the state and races outside the state shall pertain. When such a racing facility exists, or is granted race dates or is licensed by the North Dakota racing commission prior to actual physical completion, the North Dakota racing commission may redefine the allocation of breeders' fund moneys for in-state races and out-of-state races. Regardless of the designation of a major racing facility, all moneys generated via simulcasting may be held by the commission and the percentage of distribution for any one year out of the total in the fund shall remain at the discretion of the commission.~~

~~**History:** Effective January 1, 1990; amended effective March 1, 2002.~~

~~**General Authority:** NDCC 53-06.2-04, 53-06.2-05~~

~~**Law Implemented:** NDCC 53-06.2-11~~

69.5-01-09-13. Guidelines of a major racing facility. In addition to any other requirements or conditions required by the commission, a major racing facility must:

1. Be recognized annually by the North Dakota racing commission as a major racing facility.
2. Offer minimum purses of no less than one thousand two hundred dollars for major breeds racing at this track.
3. Have at least a five-furlong track with properly designed turns and chutes.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

Response by Winston Satran:

Mr. Harsche's comments are not applicable to the proposed rule changes. A public notice was advertised in official county newspapers in North Dakota. The public notice defined where the proposed rule changes were published. The proposed rule changes were posted on the ND Racing Commission website and instructions were given to those interested to contact the ND Racing Commission and they would mail a copy of the proposed changes to the individual.

If administrative rules are changed that are not listed as the proposed rule changes, it eliminates other interested parties from commenting on the change.

ND Racing Commission
500 North 9th Street, Bismarck, ND
November 2, 2010

ND Racing Commission's Consideration
of written comments submitted by three individuals
following the 9/22/2010 Public Hearing in regard to
proposed changes to the Administrative Code

Written comments received 10/4/2010 from John Ford, BAM Software and Services LLC:

1. 69.5-01-08-4 (18). In addition to the new wager types, in order to provide the Commission with greater flexibility to quickly meet the changing conditions of the industry, I would request that a new Section 69.5-01-08-4 (18) be added which would provide the Commission with the authority to approve new wagering pools after notice and public hearing, but without going through the current rule making process.

Response by Winston Satran and Assistant Attorney General Bill Peterson: It would not be advisable and it is not legal to add a provision which would allow the approval of new wagering pools without going through the rule making process. Even though the rule making process is somewhat lengthy, it provides an avenue for the public to make comment concerning wagering and the expansion to gambling in North Dakota. The current process invites public input and requires the Racing Commission to justify the changes that are being set forward. It is my recommendation that the current process continue into the future.

A motion was made by Commissioner Senftner and seconded by Commissioner Hartman to make no changes in regard to Mr. John Ford's request to allow the Commission to receive authority to approve new wagering pools, after notice and public hearing, but without going through the current rule making process. Roll was taken: Senftner-Y, Hartman-Y, Frederick-Y, Maragos-Y and Ozbun-Y. Motion Passed.

After additional discussion of Mr. Ford's comments, Commissioner Senftner suggested that Mr. Ford's comments (Nos. 1 – 54) and any further discussion or voting by the Commission be tabled until Mr. Ford, Director Satran and Legal Counsel Bill Peterson can develop a more condensed and understandable version of Mr. Ford's comments to eliminate future debate.

A motion was made by Commissioner Senftner and seconded by Commissioner Frederick to change the original motion and table the comments from Mr. Ford until Director Satran and Legal Counsel Bill Peterson can develop a more condensed version of the comments and present them before the Commission. Roll call was taken: Senftner-Y, Frederick-Y, Maragos-Y, Hartman-Y and Ozbun-Y. Motion Passed.

69.5-01-11-01

1. "Account wagering" means a form of pari-mutuel wagering in which an individual deposits money in an account and uses the account balance to pay for pari-mutuel wagers. It includes advance deposit wagering. ***All pari-mutuel wagers made or processed by a licensed service provider are considered made in North Dakota, not at the players' physical location.***

Response by Winston Satran: Assistant Attorney General Peterson's comments are: As proposed, it would not work. Also, even if the Racing Commission could draft it properly there does not seem to be any significant importance.

Account holders shall not make wagers from their account while residing or located in a non-wagering jurisdiction in which pari-mutuel wagering is forbidden. Account holders may not place wagers while residing or located in Alaska, Missouri, Nebraska, Nevada, New Jersey, North Carolina, Puerto Rico Islands, and Utah. Placing a wager while in one of these jurisdictions may result in prosecution of the account holder.

A motion was made by Commissioner Senftner and seconded by Commissioner Frederick to make no changes to Rule 69.5-01-11-01. Roll call was taken: Senftner-Y, Frederick-Y, Maragos-Y, Hartman-Y, and Ozbun-Y. Motion Passed.

5. ***Cloud Computing is Internet-based computing, whereby shared resources, software, and information are provided to computers and other devices on demand, improving security and integrity. Cloud computing describes a new supplement, consumption, and delivery model for IT services based on the Internet, and it typically involves over-the-Internet provision of dynamically scalable and often virtualized resources.***

Response by Winston Satran: There does not seem to be a need to define Cloud Computing in the Administrative Rules. Because of the changing dynamics in internet processes, we would recommend not naming an internet-based computing resource.

A motion was made by Commissioner Maragos and seconded by Commissioner Frederick to make no changes to Rule 69.5-01-11-01 (5). Roll call was taken: Maragos-Y, Frederick-Y, Hartman-Y, Senftner-Y, and Ozbun-Y. Motion Passed.

6. ***Computer Assisted Wagering is a pari-mutuel wager manually placed through the system once a preprogrammed set of terms, conditions, odds or payoffs are met.***

Response by Winston Satran: The comment does not seem to have any significance that applies to this identification.

A motion was made by Commissioner Frederick and seconded by Commissioner Senftner to make no changes to 69.5-01-11-01 (6). Roll Call was taken: Frederick-Y, Senftner-Y, Hartman-Y, Maragos-Y, and Ozbun-Y. Motion Passed.

9. "Service" provider means a person engaged in providing simulcasting or account wagering services to a site operator and establishing, operating, and maintaining the combined pari-mutuel pool, but does not include persons authorized by the federal communications commission to provide telephone service or space segment time on satellite transponders. **All wagers processed by a licensed service provider shall be deemed as being made in North Dakota.**

Response by Winston Satran: I do not see the purpose or the importance of re-drafting the regulation. See response to Recommendation No. 1.

A motion was made by Commissioner Senftner and seconded by Commissioner Maragos to make no changes to 69.5-01-11-01 (9). Roll call was taken: Senftner-Y, Maragos-Y, Hartman-Y, Frederick-Y, and Ozbun-Y. Motion Passed.

69.5-01-11-11.1

Account wagering. The requirements for account wagering are as follows:

5. 1 ***The Service Provider may establish and maintain its "Physical Presence" with licensed site operator's agreement, at site operator's location in order to be in compliance. Service provider shall be deemed in compliance when unitizing "Cloud Computing" or similar technology while maintaining agreement with Site Operator.***

Response by Winston Satran: I am not sure what purpose is intended here. This recommendation appears to be irrelevant when considering the intent of the regulation.

A motion was made by Commissioner Clarence and seconded by Commissioner Maragos to make no changes to Rule 69.5-01-11-11.1. Roll call was taken: Frederick-Y, Maragos-Y, Senftner-Y, Hartman-Y and Ozbun-Y. Motion Passed.

7. c. Authorized withdrawal from an account when the player sends to the service provider a properly identifiable request for a withdrawal. The service provider will honor the request contingent on funds being available in the account. If the funds are not sufficient to cover the withdrawal, the player will be notified, and the funds that are available may be made available for withdrawal. These transactions will be completed in accordance with financial institutions funds availability schedules **and after settlement from host tracks.**

11. The service provider may close any account when the player attempts to operate with an insufficient balance or when the account is dormant for a period determined by the commission or the site operator. In either case, the service provider shall refund the remaining balance of the account to the player within thirty days, **or upon final settlement with host tracks.**

A motion was made by Commissioner Maragos and seconded by Commissioner Senftner not to make any changes in response to these comments from Mr. Metzen. Roll call was taken: Maragos-Y, Frederick-Y, Senftner-Y, Hartman-Y and Ozbun-Y. Motion Passed.

12. b. Service providers shall notify site operators of proposed rebate programs. **(Strike/remove) and receive authorization from site operators before implementation.**

A motion was made by Commissioner Frederick and seconded by Commissioner Senftner not to make any changes in response to this comment from Mr. Metzen. Roll call was taken: Frederick-Y, Senftner-Y, Maragos-Y, Hartman-Y and Ozbun-Y. Motion Passed.

69.5-01-09-10. Distribution of funds for North Dakota-bred pari-mutuel races.

1. ~~Sixty percent of~~ The moneys accruing to the North Dakota breeders' fund shall be awarded to accredited North Dakota-bred horses who qualify for awards at licensed races ~~outside the state and forty percent shall be awarded to accredited North Dakota-bred horses who win awards at licensed races within the state.~~ Any race considered in this category must have a minimum purse of one thousand dollars and, if a claiming race, must have a minimum claiming price of two thousand five hundred dollars. All amount minimums will be determined in United States currency.
2. The official order-of-finish distribution amounts accredited must be as follows:
 - a. ~~Fifty percent of the total scheduled~~ \$1,000.00 award payment to a winning accredited North Dakota-bred horse ~~and with~~ the accredited North Dakota-bred broodmare and sire of such horse, if any payment remaining on the old system.
 - b. ~~Thirty percent of the total scheduled~~ \$750.00 award payment to the placing accredited North Dakota-bred horse ~~and with~~ the accredited North Dakota-bred broodmare and sire of such horse, if any payment remaining on the old system and
 - c. ~~Twenty percent of the total scheduled~~ \$500.00 award payment to the showing accredited North Dakota-bred horse ~~and with~~ the accredited North Dakota-bred broodmare and sire of such horse, if any, payment remaining on the old system.
 - d. For each starter after 3rd place that participates in a ND Bred Race, a \$100 award will be made.
3. ~~The North Dakota racing commission shall establish a point system assigning monetary values for each win, place, or show by North Dakota-bred horses at licensed race meets within the state and outside the state. The point system will assign values based on the relative moneys available for distribution inside the state and outside the state, and the number of horses that qualify for such awards inside the state and outside the state. The North Dakota racing commission shall award additional points within the system it established for qualifying performances by accredited North Dakota-bred horses who win, place, or show in a race at a licensed race meet outside the state where the purse is ten thousand dollars or more as follows:~~
 - a. ~~Purse of ten thousand dollars or more but less than twenty five thousand dollars is worth double points.~~
 - b. ~~Purse of twenty five thousand dollars or more but less than fifty thousand dollars is worth triple points.~~
 - c. ~~Purse of fifty thousand or more is worth quadruple points.~~
4. ~~Distribution points for win, place, or show shall be established by the North Dakota racing~~

~~commission for such performances by North Dakota-bred horses. Separate pools shall be established for moneys to be awarded to North Dakota-bred horses that earn awards at licensed races outside the state and for North Dakota-bred horses who earn awards at licensed races within the state.~~

5. The distribution of North Dakota breeders' fund award payments must be as follows:

a. Sixty percent of the scheduled award payment to owners of accredited North Dakota-breds who earn such awards, provided however, that if either the dam or sire, or both are not duly registered in the program as broodmares or stallions, that the award percentages that would have accrued to them, had they been in the program, be paid to the owner of the accredited foal up to one hundred percent of the scheduled award.

b. Thirty percent of the scheduled award payment to the owner of the dam of an accredited North Dakota-bred who earns awards, provided that the dam was registered in the North Dakota breeders' fund program as broodmare at the time the accredited North Dakota-bred was foaled.

c. Ten percent of the scheduled award payment to the owner of the sire at the time of conception of an accredited North Dakota-bred who earns awards provided that the sire was registered in the North Dakota breeders' fund program as a breeding stallion at the time the foal was conceived.

~~6. No more than a total of ten race awards or show in a race at a licensed race meet outside the state where the purse is ten thousand dollars or more as follows:~~

~~a. Purse of ten thousand dollars or more but less than twenty-five thousand dollars is worth double points.~~

~~b. Purse of twenty-five thousand dollars or more but less than fifty thousand dollars is worth triple points.~~

~~c. Purse of fifty thousand dollars or more is worth quadruple points. The North Dakota racing commission for such performances by North Dakota-bred horses. Separate pools shall be established for moneys to be awarded to North Dakota-bred horses that earn awards at licensed races outside the state and for North Dakota-bred horses who earn~~

4. Distribution points for win, place, or show shall be established by awards at licensed races within the state.

5. The distribution of North Dakota breeders' fund award payments must be as follows:

a. Sixty percent of the scheduled award payment to owners of accredited North Dakota-breds who earn such awards, provided however, that if either the dam or sire, or both, are not duly registered in the program as broodmares or stallions, that the award percentages that would have accrued to them, had they been in the program, be paid to the owner of the accredited foal up to one hundred percent of the scheduled award.

b. Thirty percent of the scheduled award payment to the owner of the dam of an accredited

~~North Dakota-bred who earns awards, provided that the dam was registered in the North Dakota breeders' fund program as a broodmare at the time the accredited North Dakota-bred was foaled.~~

~~e. Ten percent of the scheduled award payment to the owner of the sire at the time of conception of an accredited North Dakota-bred who earns awards provided that the sire was registered in the North Dakota breeders' fund program as a breeding stallion at the time the foal was conceived.~~

~~6. No more than a total of ten race awards per horse will be permitted. The owner may select the ten races (win, place, or show) for breeders' fund awards. Applications for breeders' fund awards of the preceding year's races must be received in the North Dakota racing commission office on approved forms by January fifteenth of the year, following these races~~

7. Award checks must have imprinted on them "This check is void if not cashed within sixty days after date of issuance". This statement is binding and checks not cashed within sixty days of issuance shall revert to the commission to be redeposited in the breeders' fund for future distribution awards with the exception that in the event the commission is unable to locate and award the recipient by United States first-class mail, the commission shall be given an additional sixty days beyond the void date of the award check to attempt to locate the payee. If unable to locate the payee within the additional sixty days, any such award shall revert back to the commission to be held in the breeders' fund for future distribution. Any subsequent claims for such awards by the person or entities not cashing award checks as prescribed or not located as defined by this section shall not be allowed.

8. In no event may North Dakota breeders' fund moneys be used to subsidize restricted races, other than those restricted to North Dakota-breds.

9. All broodmare and stallion awards must be calculated at the end of the year for distribution.

10. All owner's awards may be distributed with purse distribution or, until such time as sufficient criteria is established, may be calculated at year end for distribution.

11. No breeders' fund moneys will be payable to the owner or owners of the sire or dam unless the owner or owners of the runner makes application for and receives an award.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-11. Open company wins awards. Accredited North Dakota-bred horses that win open races at a North Dakota pari-mutuel track will be eligible to receive owner, breeder, and stallion awards authorized by the commission.

History: Effective January 1, 1990; amended effective March 1, 2001.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11.

~~69.5-01-09-12. Special interim clause.~~ Until such time as there exists a major racing facility in the state as described in section 69.5-01-09-13, the provisions of this chapter regarding the division of available breeders' fund moneys between races inside the state and races outside the state shall pertain. When such a racing facility exists, or is granted race dates or is licensed by the North Dakota racing commission prior to actual physical completion, the North Dakota racing commission may redefine the allocation of breeders' fund moneys for in-state races and out-of-state races. Regardless of the designation of a major racing facility, all moneys generated via simulcasting may be held by the commission and the percentage of distribution for any one year out of the total in the fund shall remain at the discretion of the commission.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-13. Guidelines of a major racing facility. In addition to any other requirements or conditions required by the commission, a major racing facility must:

1. Be recognized annually by the North Dakota racing commission as a major racing facility.
2. Offer minimum purses of no less than one thousand two hundred dollars for major breeds racing at this track.
3. Have at least a five-furlong track with properly designed turns and chutes.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

Response by Winston Satran: Mr. Harsche's comments are not applicable to the proposed rule changes. A public notice was advertised in official county newspapers in North Dakota. The public notice defined where the proposed rule changes were published. The proposed rule changes were posted on the ND Racing Commission website and instructions were given to those interested to contact the ND Racing Commission and they would mail a copy of the proposed changes to the individual.

If administrative rules are changed that are not listed as the proposed rule changes, it eliminates other interested parties from commenting on the change.

A motion was made by Commissioner Frederick and seconded by Commissioner Hartman not to make any changes in response to the written comments submitted by L.J. Harsche. Roll call was taken: Frederick-Y, Hartman-Y, Senftner-Y, Maragos-Y, and Ozbun-Y.

ND Racing Commission
500 North 9th Street, Bismarck, ND
December 14, 2010

ND Racing Commission's Consideration
of written comments submitted by John Ford
following the 9/22/2010 Public Hearing in regard to
proposed changes to the Administrative Code

11/2/2010: After approval by the Commission to do so, a meeting was held between Director of Racing Winston Satran and John Ford to discuss Mr. Ford's written comments and develop a more concise document for consideration by the Racing Commission at their December meeting.

Mr. Ford has withdrawn written comment numbers 3, 16, 17, 20, 22, 35, 37, 39, 40.

Regarding written comment numbers 1, 14, 15, 18, 26, 31, 36, 41, 45, 52, and 54, Director Satran recommends no changes to the proposed rules.

Director Satran recommends changes in general language to Nos. 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 19, 21, 23, 24, 25, 27, 28, 29, 30, 32, 33, 34, 38, 42, 43, 44, 46, 47, 48, 49, 50, 51, 53.

Assistant Attorney General Bill Peterson has also reviewed the written comments and Director Satran's recommendations. Specific legal language will be written by Assistant Attorney General Bill Peterson when finalizing the rules.

-
1. 69.5-01-08-4 (18) *(incorrect reference-in proposed rules it would be (21))*
In addition to the new wager types, in order to provide the Commission with greater flexibility to quickly meet the changing conditions of the industry, I would request that a new Section 69.5-01-08-4 (18) be added which would provide the Commission with the authority to approve new wagering pools after notice and public hearing, but without going through the current rule making process.

Director Satran recommends no changes be made to this section.

2. 69.5-01-08-04 (15)
I would request further clarification for when wagers are added to the mad scramble daily pool, the mad scramble carryover pool and the jackpot carryover pool. There are several references to the "major pool", the "carryover pool", the "mad scramble pool", the "carryover", and I think it would be helpful to always designate whether the references are to the daily pool, the mad scramble carryover pool, or the jackpot pool.

Director Satran recommends general language changes be made to this section.

15. **Mad scramble pool.**

- a. The mad scramble pool requires selection of the official first six place finishers, in their exact positions, in designated contests. The service provider must obtain written approval from the commission and site operator concerning the scheduling of the mad scramble contests and designate the percentage of the amount of carryover. The mad scramble pool **consists of** with a daily pool and jackpot carryover **and** must have predetermined percentages set aside for the

major **daily** pool designated to winners who selected the first six place finishers, and the carryover to the jackpot pool. The major **daily** pool will be distributed to the winners who selected the first six place finishers, in their exact positions, and they will then be eligible for the random drawing of the numbers assigned to the wager's ticket to be drawn for the awarding of the jackpot pool. To be awarded the jackpot pool the winner of the daily mad scramble pool must have the matching number on their ticket that is drawn randomly from the pool **group** of sixty numbers. Any changes to the approved mad scramble format require prior approval from the commission and the site operator.

- d. If there is a dead heat in the mad scramble pool involving:
- (1) Contestants representing the same betting interest, the major **daily** pool will be distributed as if no dead heat occurred.
 - (2) Contestants representing two or more betting interests, the mad scramble **daily** pool will be distributed as a single price pool with each winning wager receiving an equal share of the profit.

4. 69.5-01-08-04 (15) (c)

There is a reference to "method one" which is not defined and unclear as to its meaning. In addition, could the service provider have the flexibility to offer consolation and minor pools?

Director Satran recommends general language changes be made to this section.

- c. The mad scramble pool shall be apportioned under method one, position six, with no minor pool and carryover **by choosing the first six horses in exact order of finish.**

The service provider must make a written request to the commission and the site operator for approval to offer consolation and minor pools in the mad scramble pool, and be granted approval before implementation.

5. 69.5-01-08-04 (15) (c) (2)

Could you clarify that the net pool, when there are no wagers, is added to the major pool carryover, and not the jackpot pool carryover.

Director Satran recommends general language changes be made to this section.

- (2) If there are no wagers qualifying for the major share, the net mad scramble pool **major share** shall be added to the carryover.

6. 69.5-01-08-04 (15) (f) (2) (a)

With regard to mandatory distribution, it doesn't define what a "major share" is when describing qualifications for winning bettors.

Director Satran recommends general language changes be made to this section.

- (2) If the mad scramble carryover is designated for distribution on a specific date and performance, and if there are no wagers qualifying for the major share, **which is sixty-five percent of the pool**, then the following precedence shall be followed in determining the winning wagers for the mad scramble daily pool and carryover pool:

- (a) The major share and the mad scramble carryover shall be distributed as a single price pool to those who selected all six

finishers, in exact positions, based upon the official order of finish, and who have received a matching random number selected through a drawing of one of sixty numbers, minus the service provider or race track take out.

7. 69.5-01-08-04 (15) (h)

Could you remove the limit on the amount of money which can be contributed to mad scramble carryover, as well as provide for the moneys contributed to be removed from the pool.

Director Satran recommends general language changes be made to this section.

- h. With written approval of the commission and the site operator, the service provider may contribute to the mad scramble carryover a sum of money not to exceed the current sum of the pool. **to be designated by the service provider or the race track. Moneys contributed to the pool may be withdrawn when the pool accumulation totals the moneys contributed.**

8. 69.5-01-08-04 (16) (c)

Shouldn't the percentage start at 100% when someone selects all nine correctly, and then decrease from there, instead of starting at 50%? And under subsection (5), shouldn't the carryover amount be the daily net pool, less the payout given under subsections 2-4, as opposed to 50% of the net pool carryover?

Director Satran recommends general language changes be made to this section.

- c. The pick 1-2-3 pool and carryover, if any, shall be distributed as a single price pool to those who selected the winning combination of the top three finishers in three races, or a decreasing scale of qualifiers eight of nine, seven of nine, or six of nine, in the following payout method:

- (1) Fifty percent of net pool and accumulated jackpot divided between players selecting nine of nine.
- (2) Thirty percent of net pool divided between players selecting eight of nine.
- (3) Fifteen percent of net pool divided between players selecting seven of nine.
- (4) Five percent of net pool divided between players selecting six of nine.
- (5) If there are no winning wagers for the nine of nine winners, then fifty percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
- (6) If there are no winning wagers for the eight of nine winners, then thirty percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
- (7) If there are no winning wagers for the seven of nine winners, then fifteen percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.
- (8) If there are no winning wagers for the six of nine winners, then five percent of the net pool carryover will be added to the next pick 1-2-3 race in the race meet schedule.

9. 69.5-01-08-04 (16) (f) (1)

The refund amount should be of the daily pool, not the entire pool, which might be construed to include the carryover.

Director Satran recommends general language changes to this section.

- (1) If any of the pick 1-2-3 contests are canceled or declared no contest prior to the first pick 1-2-3 contest being declared official, the entire **daily** pick 1-2-3 pool shall be refunded on the pick 1-2-3 wagers for those contests.
- (2) If all remaining pick 1-2-3 contests are canceled or declared no contest after the first pick 1-2-3 contest is declared official, the entire net pick 1-2-3 pool, but not the pick 1-2-3 carryover, shall be distributed as a single price pool to wagers selecting the winning combination in the first pick 1-2-3 contest. However, if there are no wagers selecting the winning combination in the first pick 1-2-3 contest, the entire **daily** pick 1-2-3 pool shall be refunded on pick 1-2-3 wagers for those contests.

10. 69.5-01-08-04 (16) (h)

This seems to prevent people from selecting coupled entries in the Pick 1-2-3 wager? Why shouldn't you be able to select a coupled entry?

Director Satran recommends deleting this section.

~~**h. Coupled entries and mutuel fields. Coupled entries and mutuel fields are not permitted in pick 1-2-3 contests.**~~

11. 69.5-01-08-04 (17) (c)

Comment 8 from above applies to this section as well. (Shouldn't the percentage start at 100% when someone selects all nine correctly, and then decrease from there, instead of starting at 50%? And under subsection (5), shouldn't the carryover amount be the daily net pool, less the payout given under subsections 2-4, as opposed to 50% of the net pool carryover?)

Director Satran recommends general language changes be made to this section.

c. The pick 1-2-3-4-5 pool and carryover, if any, shall be distributed as a single price pool to those who selected the first five finishers in three races or a decreasing scale of qualifiers fifteen of fifteen, fourteen of fifteen, thirteen of fifteen, or twelve of fifteen in the following payout method:

- (1) Fifty percent of net pool and accumulated jackpot divided between players selecting fifteen of fifteen.
- (2) Thirty percent of net pool divided between players selecting fourteen of fifteen.
- (3) Fifteen percent of net pool divided between players selecting thirteen of fifteen.
- (4) Five percent of net pool divided between players selecting twelve of fifteen.
- (5) If there are no winning wagers for the fifteen of fifteen winners, then fifty percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.

- (6) If there are no winning wagers for the fourteen of fifteen winners, then thirty percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.
- (7) If there are no winning wagers for the thirteen of fifteen winners, then fifteen percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.
- (8) If there are no winning wagers for the twelve of fifteen winners, then five percent of the net pool carryover will be added to the next pick 1-2-3-4-5 race in the race meet schedule.

12. 69.5-01-08-04 (18)

Can you insert "Unless otherwise provided herein," at the beginning of this section?

Director Satran recommends general language changes be made to this section.

18. **Refunds.** Unless otherwise provided herein, after wagering has commenced, if a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting gate door to open properly, the wagers on such horse must be deducted from the pools, and refunded upon presentation and surrender thereof. If more than one horse represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager or part of a combination then there may be no refund unless all of the horses representing such single betting interest are excused by the stewards or are prevented from racing because of failure of the starting gate doors to open properly, or both.

13. 69.5-01-08-04 (19)

The caveat for Daily Double should reference other wager types as well.

Director Satran recommends general language changes be made to this section.

46.19. **Race canceled.** If for any reason a race is canceled or declared "no race" by the stewards after wagering has commenced on such race, then all wagering thereon must be refunded upon presentation and surrender of pari-mutuel tickets thereon; except as to daily double, pick, twin trifecta, tri-superfecta, twin quinella, pick 1-2-3, and pick 1-2-3-4-5 pool wagers upon cancellation of the second daily double race, which must be distributed as provided under subsection 5, unless otherwise provided by law or regulation.

14. 69.5-01-11-01 (1)

Can you add "entity" as to who may open an account?

Director Satran recommends no changes be made to this section.

15. 69.5-01-11-01 (6)

Can you insert "at a sending race track" after the word "person", as this definition seems to be applicable to conduct at race tracks.

Director Satran recommends no changes be made to this section.

18. 69.5-01-11-04 (12) (c)

The second to the last sentence, could you change it to read as follows, so that a further change would not be required in the event of a law change with regard to breakage: "A simuleast service provider shall also submit a report and a corresponding payment of

funds to the racing commission for the full amount of all breakage due to North Dakota retained by a simulcast service provider. The last sentence should be revised to calculate breakage in accordance with the host track rules.

Director Satran recommends no changes be made to this section.

19. 69.5-01-11-04 (13)

In changing this paragraph, which mostly covered race stewards, to now only apply to auditors, a few changes are requested. Subsection (a) only seems appropriate to live race meets, not to service providers. Subsection (c) seems overly broad when applied to auditors. It requires a report of "all actions" taken by a service provider or totalizator company. Is there a specific area to which the report should relate? Subsection (d) grants the auditor the power of a "presiding official" when he is on the premises of a service provider. While that may have been appropriate for a steward, is it appropriate for an auditor?

Director Satran recommends general language changes to this section.

- 14 13. The commission may ~~appoint stewards~~ approve auditors as reasonably necessary for the protection of the public interest. The commission shall be reimbursed on a monthly basis for the salaries, benefit, and travel expenses by the simulcast service provider for the auditors ~~and stewards~~ assigned to them. Duties of a ~~steward or an~~ auditor shall include the following **when instructed by the commission**:

21. 69.5-01-11-06 (7)

I would suggest that further changes be made to this section to accommodate self-service kiosks. I would suggest the following:

Only a licensed employee of a simulcast site operator may conduct simulcast or pari-mutuel wagering on behalf of a simulcast-site operator, except where valid pari-mutuel wagers tickets are processed issued by a self-service pari-mutuel ticket machine device which is an automated ticket machine, conducted electronically, telephonically, or through the internet. A simulcast site operator or service provider may use such devices automated ticket machines only with the prior approval of the commission. When such devices automated teller machines are used by a simulcast site operator or service provider, the operator may contract with persons other than employees whose activities on behalf of the simulcast site operators or service provider must be limited to the following:

- a. To collect and account for cash receipts extracted from such devices a voucher issuing machine.
- b. To provide and account for pay out cash disbursements for winning tickets and for withdrawals from wagering accounts.
- c. To maintain a record of such cash-handling activities using a record keeping system devised by the site operators or service provider and approved by the commission.

Such contractors must be licensed by the commission.

Director Satran recommends general language changes to this section.

- 8- 7. Only a licensed employee of a simulcast site operator may conduct simulcast or pari-mutuel wagering on behalf of a simulcast site operator, except where valid pari-mutuel tickets **wagers** are issued **processed** by a pari-mutuel ticket machine **self-service device** which is an automated ticket machine, conducted electronically, telephonically, or

through the internet. A simulcast site operator or service provider may use such automated ticket machines devices only with the prior approval of the commission. When automated teller machines such devices are used by a simulcast site operator or service provider, the operator may contract with persons other than employees whose activities on behalf of the simulcast site operators or service provider must be limited to the following:

- a. To collect and account for cash receipts extracted from a voucher-issuing machine such devices.
- b. To provide and account for pay out cash disbursements for winning tickets and for withdrawals from wagering accounts vouchers issued by an automated teller machine.
- c. To maintain a record of such cash-handling activities using a record keeping system devised by the site operators or service provider and approved by the commission.

Such contractors must be licensed by the commission.

23. 69.5-01-11-11.1 (1)

I would request the fourth and fifth sentences be replaced with the following:

The notification must occur prior to or at the time of when the new rules are applied to the account. Notification may be posted on the website utilized for account wagering, or by mailing to the player at their last known address. The player shall be deemed to have accepted the rules of account operation upon opening or not closing the account.

Director Satran recommends general language changes to this section.

1. A site operator may offer a system of account wagering to its players in which wagers are debited and payouts credited to a sum of money, deposited in an account by the player, that may be held by a service provider. The service provider shall notify the player, at the time of opening the account, of any rules the site operator or service provider has made concerning reporting, monitoring, changes of awards, account activity (deposits or withdrawals), user fees, or any other aspect of the operation of the account. The service provider shall notify the player and the site operator whenever the rules governing the account are changed. The notification must occur **prior to or at the time when** thirty days before the new rules are applied to the account. **Notification shall be posted on the website utilized for account wagering, or by mailing to the player at their last known address.** The player shall be deemed to have accepted the rules of account operation upon opening or not closing the account. The site operator and service provider shall present the method of account wagering to the commission for review and approval.

24. 69.5-01-11-11.1 (2)

I would request that the word "review" be deleted, as it implies some discretionary activity, when in fact accounts are approved electronically if personal information can be electronically verified.

Director Satran recommends deleting "review" from this section.

2. To establish an account with the service provider, the player must be approved through a **review** process developed by the service provider and shared with the site operator and commission.

25. 69.5-01-11-11.1 (3)

There are some very good changes in this section, but I would request a few changes. I would suggest that the lists referenced in the third sentence is too vague. Could it be more objective, such as lists "specified by the commission"? I would ask that the fifth sentence be deleted as much too broad a requirement. You have already required filtering through government sanctioned lists. This would require a higher standard? Name analysis? As well, the seventh sentence is much too vague. If there are standards to be met, I would suggest that they be clearly stated. Otherwise, only confusion will result.

Director Satran recommends general language changes to this section.

3. The information each player submits must be subject to electronic verification. The verification must identify clients and obtain information with respect to name, principal residence address, date of birth, and verification of information through testing criteria established by electronic verification pertinent to doing financial business with them. The service provider must verify that the customer is not on any **of the following** lists: **of known fraudsters, terrorists, or money launderers. Specially Designated Nationals List, maintained by the U.S. Department of the Treasury, and Designated Foreign Terrorist Organizations list, maintained by the U.S. Department of State.** If there is a discrepancy between the application submitted and the information provided by the electronic verification described above, or, if no information on the applicant is available from such electronic verification, another individual reference service may be accessed or another technology meeting the requirements described above may be used to verify the information provided. ~~The service provider must utilize software that would provide name analysis and trend monitoring to assist in identifying unusual activity and money laundering.~~ The information secured by the service provider must be documented and available to the site operator and commission upon request. **In the event monthly wagering by a single customer accounts for more than 10 percent of the service provider's total monthly wagering, the service provider shall perform additional identify** The verification **which** must be **specific, measurable, timely, and proportionate to the possible risks** and resources **available**. The service provider may close or refuse to open an account for what it deems good and sufficient reason, and shall order an account closed if it is determined that information that was used to open **an** account was false, or that the account has been used in violation of law or rules.

26. 69.5-01-11-11.1 (4)

Can you add "or service provider" at the end?

Director Satran recommends no changes be made to this section.

27. 69.5-01-11-11.1 (5) (c)

Can this subsection be modified as follows:

The service provider shall provide, for each player, a confidential account number or user name and password or PIN to be used by the player to access their account, or at the service provider's option, confirm the validity of every account transaction.

Director Satran recommends general language changes to this section.

5. The service provider may offer to players:

- a. Accounts that are operational for any performance offered by the service provider, whereby wagers are placed by the player at a self-service terminal or by any electronic means.

- b. The service provider may reserve the right at any time to refuse to open an account, to accept a wager, or to accept a deposit.
- c. The service provider shall provide, for each player, a confidential account number **or user name** and password **or PIN** to be used by the player to **access their account, or at the service provider's option**, confirm validity of every account transaction.

28. 69.5-01-11-11.1 (6)

I would suggest that the regulations not limit the ways in which players can deposit monies into their accounts. Could the first sentence be changed to read as follows: "Deposits may be made in such ways as are offered by the site operator or service provider."

Director Satran recommends general language changes to this section.

- 6. Deposits may be made ~~by check or electronic transfer in such ways as are offered by the site operator or service provider.~~ Holding periods will be determined by the service provider, and the player will be informed of this period. A receipt for the deposit may be issued electronically to the player by the service provider.

29. 69.4-01-11-11.1 (7) (c)

Could you change the first two sentences as follows:

Authorized withdrawal from an account when the player transmits to the service provider a properly identifiable request for a withdrawal. The service provider will honor the request contingent on collected funds being valuable (available) in the account, and upon satisfaction of such rules for withdrawal as shall have been established by the service provider and for which the player has notification.

With this change, I think the last sentence should be deleted.

Director Satran recommends general language changes to this section.

- c. Authorized withdrawal from an account when the player sends to the service provider a properly identifiable request for a withdrawal. The service provider will honor the request contingent on funds being available in the account **and subject to funds collected by the host track and approved by the commission.** If the funds are not sufficient to cover the withdrawal, the player will be notified, and the funds that are available may be made available for withdrawal. These transactions will be completed in accordance with financial institutions funds availability schedules.

30. 69.5-01 -11-11.1 (10) (b)

Please add the word "not" before operable in the first sentence of this subsection. I believe the second sentence of this subsection is wrong. The actual wager should be the wager which was transmitted and confirmed by the tote, subject to proper merger by the tote. If the player requested a different wager, I don't think you should treat that as the wager, because you would then be paying winners regardless of whether the wager was ever submitted by the tote.

Director Satran recommends general language changes to this section.

- b. For wagers made telephonically or electronically the service provider shall make a voice or electronic recording of the entire transaction, and shall not accept any such wager if the voice or electronic recording system is **not** operable. The voice

and electronic recording of the transaction shall be deemed to be the actual wager regardless of what was recorded by the pari-mutuel system.

31. 69.5-01-11-11.1 (11)

Can you replace commission or site operator with service provider?

Director Satran recommends no change be made to this section.

32. 69.5-01-11-11.1 (12)

Please add the word "site" before the word "operator" in the second line. Can you delete subsection 12(b) as there seems to be no reason for the site operator to have control over the marketing promotions and efforts of the service provider. I don't know the purpose of subsection 12(c), but I don't see the appropriateness of having the site operator "approve" or make "objection" to historical transactions. Can you also delete this subsection?

Director Satran recommends general language changes to this section.

12. The service provider shall establish with the site operator the minimum amount due to the **site** operator as negotiated by each entity. This information should be filed with the commission.

a. The service provider shall provide real time monitoring of all accounts to the site operator and the commission.

b. Service providers shall notify site operators of proposed rebate programs **thirty days prior to implementation** and receive authorization from site operators before implementation.

c. Service providers shall provide reports of account wagering activity to the site operator for their review, **approval, or objection to the transactions.**

33. 69.5-01-11-11.2 (2)

Can you add the word "commission" before the word "approval" in the first line?

Director Satran recommends general language changes to this section.

2. Wagering, subject to **commission** approval and compliance with applicable law and rules, may be accepted by separate totalizator systems in this or other jurisdictions, and combined via communication between totalizator systems.

34. 69.5-01-11-11.2 (3)

Can you delete the word "licensing" from the second line of this subsection. Do you really want to delegate licensing of tote providers?

Director Satran recommends general language changes to this section.

3. The commission may, without specific reference in these rules, utilize a designee for the purposes of **licensing**, certification, verification, inspection, testing and investigation. A commission designee may be another commission or equivalent regulatory authority, a multi-jurisdictional group of regulatory authorities, association of regulatory authorities, or auditing, consulting, security, investigation, legal services, or other qualified entities or persons.

36. 69.5-01-11 (13)

Throughout these next sections, the term "authorized pari-mutuel wagering entity" is used extensively. This is not defined. In some instances, such as with Subsection 69.5-01-11-13 (1)(a), it seems more applicable to the site operator who operates a race track. In others, such as subsection 69.5-01-11-13 (1) (b) it seems equally applicable to site operators who run a race track and service providers who conduct account wagering.

Director Satran recommends no change be made to this section.

38. 69.5-01-11-13 (4) (a) (1) (c) (d) and (e)

I would suggest that tote software not be required to accept advanced wagers, assuming that to be a reference to accepting wagers days before an event takes place. I would recommend that networking with remote wagering sites only be required if that is part of the tote's operating plan submitted to the commission. And, I would recommend the requirement of simultaneous wagering cards only if part of the tote's operating plan submitted to the commission.

Director Satran recommends deleting (c) from this section.

4. Software requirements.

a. General requirements.

(1) The totalizator system program must be able to do all of the following:

(a) Sell, calculate, cash and refund according to the pool profile, current rules, and number of races.

(b) Produce the required reports and logs and other reports and logs the commission may prescribe.

~~(c) Accept and store advanced wagers.~~

(d) Network with the remote wagering sites.

(e) Offer simultaneous wagering cards.

41. 69.5-01-11-13 (4) (a) (1) (o)

Can you delete the second sentence of this subsection, as it may contain proprietary and confidential information.

Director Satran recommends no changes be made to this section.

42. 69.5-01-11-13 (4) (a) (2)

This is also based on old technology, and should not require that tote software be able to identify individual users. Rather, they should be sufficient if they identify individual service providers.

Director Satran recommends general language changes to this section.

(2) The operating system must be separated from the application program. The operating system must ~~be based on identified individual users~~ and maintain auditable records ~~transactions of those users.~~

43. 69.5-01-11-13 (4) (c)

Can you insert the word "data" in the second line of subsection (1) before the word "files", in the second line of subsection (2) before the word "files". And can you insert at the start of subsection (3), "if required by the commission,"

Director Satran recommends general language changes to this section.

- c. **Backup.** Before beginning operations, the totalizator company shall submit a backup procedure plan to the commission for approval, and should include all of the following:

- (1) Full system backups made at weekly intervals. Full system backups must include all **data** files contained on the totalizator system.
- (2) Incremental system backups made at daily intervals. Incremental system backups must include all **data** files that were changed since either the last full system or incremental backup.
- (3) Backups stored at an off-site storage area in a disaster-resistant environment.

44. 69.5-01-11-13 (4) (d)

Please delete "may be subject to the approval of the commission and the jurisdiction's taxing and finance authority, if appropriate" from subsections (1) and (3).

Director Satran recommends general language changes to this section.

- d. **Change to totalizator software.**

- (1) All changes to the software on the central site computers, peripherals, or firmware changes downloaded to terminals may be subject to the approval of the commission ~~and the jurisdiction's taxing and finance authority, if appropriate.~~
- (2) The totalizator company is responsible to notify the commission at least thirty days prior to any major revisions.
- (3) A major revision to the software may not be initialized or operated during wagering until tested and approved by the commission ~~and the jurisdiction's taxing and finance authority, if appropriate.~~ The daily computer log must show all of the following:
 - (a) When a change was loaded into the totalizator system.
 - (b) The time the work commenced and the time the work was completed.
 - (c) When the old software was removed from the system.

45. 69.5-01-11-14 (1) (a) (2)

With the goal of not requiring adherence to old tote procedures, I would request the second sentence of this subsection and all of the subparts (a) through (h) be deleted.

Director Satran recommends no changes be made to this section.

46. 69.5-01-11-14 (1) (a) (3) (c)

Please modify this to read as follows: "Permit revisions of computer programs on a sequentially numbered basis, which numbering shall be maintained."

Director Satran recommends general language changes to this section.

- (c) Permit revisions of computer programs only after receiving a written or electronic request from a user, submitted on a sequentially numbered basis. change request form, which is maintained.

47. 69.5-01-11-14 (1) (a) (3) (e)

Please modify this to read as follows: "Require all program changes to be thoroughly tested, reviewed and approved by procedures adopted by the totalizator company before being placed into operation."

Director Satran recommends general language changes to this section.

- (e) Require all program changes to be thoroughly tested, reviewed and approved by procedures adopted by the a totalizator company supervisor before being placed into operation.

48. 69.5-01-11-14 (1) (b)

With the goal of not requiring adherence to old tote procedures, I would request the first two sentences be modified as follows: "A totalizator company shall maintain a written operations manual for the totalizator system. The manual must clarify the authority, duties, responsibilities, and lines of communication."

Director Satran recommends general language changes to this section.

- b. **Totalizator operations.** A totalizator company shall maintain a written operations manual for the totalizator system in the totalizator room. The manual must clarify the authority, duties, responsibilities, and lines of communication for totalizator operators and network managers. The manual must contain sufficient detail to ensure totalizator personnel understand their job duties. The operations manual must include complete documentation for operation of the totalizator system and its software, including all of the following:

49. 69.5-01-11-14 (2) (a) (1)

With the goal of not requiring adherence to old tote procedures, please revise the second sentence to read as follows: "The totalizator company shall employ a sufficient number of personnel to ensure an adequate segregation of duties designed to avoid collusion."

Director Satran recommends general language changes to this section.

2. **Personnel requirements.**

a. **General requirements.**

- (1) A totalizator company must provide necessary personnel to perform the duties described in the rules. The totalizator company shall employ a sufficient number of personnel to ensure an adequate segregation of duties between the personnel performing the network manager, programmer, totalizator operator, and technician duties. to avoid

collusion. The totalizator company may use job titles different from those in the rules.

50. 69.5-01-11-14 (2) (a) (3)

With the goal of not requiring adherence to old tote procedures, I would request that this section, other than the first sentence, be deleted.

Director Satran recommends general language changes to this section.

- (3) The totalizator company shall have procedures and documentation that show the verification of totalizator position applicants' experience and education as indicated on their job applications. The totalizator company must prescribe and maintain job descriptions containing the experience, education, and organization training requirements for all of the following totalizator positions, **if needed**:

51. 69.5-01-11-14 (2) (a) (8)

I would request that the word "operations" be inserted before the word "personnel".

Director Satran recommends general language changes to this section.

- (8) The totalizator company shall have a policy of mandatory time away from the job for each totalizator **operations** personnel within each calendar year.

52. 69.5-01-11-14 (2) (b) (c) and (d)

With the goal of not requiring adherence to old tote procedures, I would request these sections be deleted.

Director Satran recommends no changes be made to this section.

53. 69.5-01-11-15 (2) (3) and (4)

With the goal of not requiring adherence to old tote procedures, I would request that actual printing of reports only be done at the request of the commission.

Director Satran recommends general language changes to this section.

2. **Pre-race reports. When requested** by the commission, before starting wagering each day, the totalizator operator shall print all of the following reports:

- ...
3. **Race-by-race reports.** For each race offered, the totalizator system must be capable of printing all the following reports, and have them available for review by the pari-mutuel manager and **as requested by** the commission:

- ...
4. **End-of-day reports.** For each race offered, the totalizator system must be capable of producing all the following reports, and have them available for review by the pari-mutuel manager and **as requested by** the commission:
...

54. 69.5-01-11-15 (2) (b)

So as not to impose these rules on wagering devices, such as remote self-service kiosks, can you require these rules only for devices supplied by the tote and directly connected with the tote?

Director Satran recommends no changes be made to this section.